

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 06-546 PJH

v.

CHUKA OGELE,

Defendant.

**ORDER DENYING MOTION FOR  
EARLY TERMINATION OF SUPERVISED  
RELEASE**

Before the court is the motion of defendant Chuka Ogele for early termination of supervised release pursuant to 18 U.S.C. § 3582(e) and Federal Rule of Criminal Procedure 32.1(c). Doc. no. 110. Defendant brings the motion on the ground that he is in financial and personal difficulty and would be able to make a reasonable living if permitted to return to his native country, Nigeria. Defendant also requests a hearing to present additional reasons for early termination. The government opposes the motion for early termination. Defendant's motion to terminate supervised release is DENIED for the reasons set forth below.

**BACKGROUND**

On September 14, 2007, defendant entered a guilty plea on the following counts:

- a. Possession of controlled substances with intent to distribute in violation of 21 U.S.C. § 841(a)(1) (Count One);
- b. Possession of controlled substances in violation of 21 U.S.C. § 841(a)(1) (Count Three);
- c. Conspiracy to distribute controlled substances in violation of 21 U.S.C. § 846 (Count Four)

- d. Travel in interstate commerce to promote unlawful activity and use of facility in interstate commerce to distribute proceeds of unlawful activity in violation of 18 U.S.C. §§ 1952 and 2 (Count Six);
- e. Money laundering in violation of 18 U.S.C. § 1956 (Counts Twenty-Two and Twenty-Three);
- f. Conspiracy to engage in and attempt to engage in monetary transactions with criminally deprived property in violation of 18 U.S.C. §§ 1957 and 371 (Count Thirty-Seven).

Docket No. 67 ¶ 1 (Plea Agreement).

Defendant was a licensed vocational nurse and formed a non-profit organization called International Surplus Medical Products (ISMP) in 1997, with the stated purpose of delivering medication and medical supplies to Nigeria. Docket No. 71 (Def. Sentencing Memo.). Upon entering his guilty plea, defendant admitted that he falsely represented himself to be a medical doctor and fraudulently used the medical license of ISMP's medical director to purchase controlled substances with the intention of distributing these substances to other persons. *Id.* ¶ 2(a). Defendant hired a co-conspirator to sell these controlled substances in the area of Oakland, California, and planned with others to transport the drugs to Houston, Texas for distribution. *Id.* ¶¶ 2(b) - (d). Defendant further admitted that he used funds from the unlawful sale of drugs to buy more drugs with the intent to promote the unlawful distribution of controlled substances, and that he intended to purchase a home for \$1.3 million in cash with the proceeds of the unlawful sales. *Id.* ¶ 2(e) and (f).

Defendant was sentenced to 37 months imprisonment, three years supervised release, \$700 in special assessments, and \$373,128.09 in restitution. Docket No. 105 (Judgment). Defendant was released from custody on March 11, 2011, and has completed more than one year of his supervised release term.

#### LEGAL STANDARD

Early termination of supervised release is governed by 18 U.S.C. § 3583(e),

1 which requires the court to consider factors set forth in §§ 3553(a)(1), (a)(2)(B), (a)(2)(C),  
2 (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7). Those factors “include the nature and  
3 circumstances of the offense, the need for deterrence, the need to protect the public, the  
4 need to provide defendant with training or medical care, and the relevant provisions of the  
5 Sentencing Guidelines.” *United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002).  
6 After considering those § 3553(a) factors, the court may “terminate a term of supervised  
7 release and discharge the defendant released at any time after the expiration of one year of  
8 supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure  
9 relating to the modification of probation, if it is satisfied that such action is warranted by the  
10 conduct of the defendant released and the interest of justice.” 18 U.S.C. § 3583(e)(1).

#### 11 DISCUSSION

12 Defendant seeks early termination of supervised release on the ground that gainful  
13 employment has been made difficult by his conviction and the moribund economy.  
14 Defendant contends that he would be able to rekindle his business relationships in Nigeria  
15 and make a reasonable living if permitted to return there. Defendant offers no details of  
16 prospective business opportunities to support this contention, nor does he explain why  
17 fulfilling his term of supervised release would inhibit his ability to make a reasonable living.

18 Looking first to the nature and circumstances of the offense and defendant’s history  
19 and characteristics pursuant to § 3553(a)(1), the court does not find support for early  
20 termination of supervised release. At sentencing, defendant denied that he misled doctors  
21 and other professionals into believing that ISMP was a legitimate charity and that ISMP  
22 was a sham operation for purchasing narcotics for the purpose of conducting street-level  
23 drug sales. Docket No. 71 at 2. However, defendant admitted that he engaged in  
24 deceptive conduct to obtain controlled substances with the intent of illegally distributing  
25 drugs in Oakland and Houston, by falsely representing that he was a medical doctor and  
26 fraudulently using the medical license of a doctor associated with ISMP. From July 2002 to  
27 September 2004, defendant bought large quantities of Schedule III controlled substances  
28 such as hydrocodone and acetamin with codeine, as well as Schedule V controlled

1 substances containing codeine. Docket No. 67 ¶ 2(a). He admitted to obtaining controlled  
2 substances worth over one million dollars during that period. *Id.* At defendant's direction,  
3 the controlled substances were delivered to ISMP's offices. *Id.* Defendant admitted that on  
4 a trip to Houston, he obtained \$975,381 in cash, which he knew was derived from the sale  
5 of controlled substances. Docket No. 67 ¶ 2(f)(7).

6 At sentencing, defendant requested a downward departure from the Guidelines  
7 sentencing range. Docket No. 71. The court found an offense level of 21, leading to a  
8 Guidelines range of 37-46 months, and sentenced defendant to 37 months in custody,  
9 denying his request for downward departure. Docket No. 86. The court sentenced  
10 defendant to three years of supervised release under special conditions as well as the  
11 usual terms and conditions. *Id.*

12 Having considered the need to afford adequate deterrence to the distribution of  
13 controlled substances, the need to protect the public from further crimes of defendant, the  
14 Guidelines sentencing range established for applicable offense category, and the need to  
15 avoid unwarranted sentence disparities, the court finds that defendant has failed to show  
16 that his speculative access to resources in Nigeria warrants early termination of supervised  
17 release. 18 U.S.C. §§ 3553(a)(2)(B), (a)(2)(C), (a)(4), (a)(6). Defendant does not contend  
18 that either the need to provide him with necessary training or medical care, or a policy  
19 statement of the Sentencing Commission, warrants early termination pursuant to  
20 § 3553(a)(2)(D) or (a)(5).


21 Pursuant to § 3553(a)(7), the court also considers the need to provide restitution,  
22 which the court found in the amount of over \$370,000 for money owed to Priority  
23 Healthcare for goods and pharmaceuticals that defendant did not pay for after obtaining  
24 them. Docket No. 104. Defendant points out that he still faces a staggering restitution  
25 obligation, but does not demonstrate how early termination of supervised release would  
26 help him fulfill that obligation.

1 Defendant fails to show any compelling ground for terminating his supervised  
2 release, and the motion for early termination of supervised release is therefore DENIED.  
3 No modification to the terms or conditions of supervised release is made.

4 Defendant's request for a hearing on his motion for early termination of supervised  
5 release is DENIED in view of the court's unavailability between December 6 and January 1,  
6 and because no hearing is needed. However, if defendant wishes to present additional  
7 reasons for the court's re-consideration, he must do so by filing an affidavit in support of a  
8 written motion which the court will consider in January.

9 IT IS SO ORDERED.

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11 Dated: December 4, 2012

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14 PHYLLIS J. HAMILTON  
15 United States District Judge  
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